

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

CHARLES NANCE

PLAINTIFF

v.

No. 1:19-CV-210-SA-RP

CITY OF WEST POINT, et al.

DEFENDANTS

ORDER DENYING MOTION FOR REMAND

This matter comes before the court on the motion of the Plaintiff, Charles Nance, seeking remand of this case to state court. ECF doc. 12. The case was originally removed to this court through notice filed by defendants Eddie Scott and Terry Scott. ECF doc. 1. Pursuant to 28 U.S.C.A. §1441, a civil action filed in state court may be removed to the federal district court and division where the state court is located if that federal court could have exercised jurisdiction over the case. In this case, this court has subject matter jurisdiction over Plaintiff's allegations of constitutional violations. More importantly, Nance does not challenge the jurisdiction of this court. Rather, Nance asserts that defendants Eddie Scott and Terry Scott did not properly join in the notice of removal and did not formally consent to the removal as required by 28 U.S.C.A. §1446(b)(2)(A), which requires the joinder or consent of all defendants properly served. ECF doc. 12, pg. 7. Plaintiff further asserts that Deputy Terry Scott was not properly served thereby invalidating the remand. ECF doc. 12, pg. 9. The Defendants responded to Nance's motion arguing that, because Eddie Scott and Terry Scott were the parties filing the notice of removal, they clearly consented to removal of the case. ECF doc. 15, pg. 3. Further, they argue the state court record reflects that Terry Scott was properly served.

The Court agrees that the fact Eddie Scott and Terry Scott were the parties who originally removed the case is sufficient evidence of their consent to the removal. Moreover, the state court

record clearly shows that Sheriff Eddie Scott, in his official capacity, accepted process on behalf of Terry Scott on October 30, 2019. ECF doc. 8. As such, Nance's arguments for remand lack merit. The plaintiff's motion for remand to state court [12] is DENIED.

SO ORDERED, this the 9th day of April, 2020.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE